

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JAMES FARNAN

Plaintiff,

v.

JOSEPH LEHMAN,

Defendant.

Case No. C04-5619RBL

REPORT AND  
RECOMMENDATION

**NOTED FOR:  
AUGUST 5<sup>th</sup>, 2005**

This Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1)(B). Before the court is defendant's motion for summary judgment. (Dkt. # 14). Plaintiff has not responded and instead filed a motion for "Emergency Stay." (Dkt. # 15). Plaintiff has also filed a document entitled "Motion for Enlargement of Time to Respond to Report and Recommendation." (Dkt. # 17). Plaintiff's motions will be dealt with by separate order.

In this action plaintiff challenges the failure of the Department of Corrections to release him prior to the expiration of his maximum sentence. He alleges a Department policy, 350.200, prevented the Department from considering release plans he submitted for community custody placement. Plaintiff alleges that because he had been referred for civil commitment as a sexual

1 predator his plans would not be considered or were arbitrarily denied. The facts and evidence  
2 submitted by defendant show plaintiff's plans were considered

### 3 FACTS

4 Plaintiff has not responded to the Summary Judgement filed in this action. The court adopts  
5 the facts submitted by defendant Lehman. Defendant Lehman indicates plaintiff was convicted of  
6 attempted rape in the second degree by jury verdict on May 15<sup>th</sup>, 1996. He was sentenced to 102  
7 months and 24 months community placement. (Dkt. # 14, page 2). Plaintiff had an anticipated early  
8 release date of July 1<sup>st</sup>, 2002. This was the date he would become eligible for community custody  
9 placement in lieu of "earned early release." His maximum release date was August 8<sup>th</sup>, 2004. (Dkt. #  
10 14, page 2). Plaintiff indicates his anticipated release date was June 18<sup>th</sup>, 2002 and he was actually  
11 released on August 6<sup>th</sup>, 2004. The difference in dates is irrelevant to the courts analysis. (Dkt. # 5,  
12 complaint).

13 Defendant Lehman establishes that proposed release plans for possible transfer to community  
14 custody are investigated by Community Correctional Officers, (CCO.). (Dkt. # 14, page 2). He  
15 further established that plaintiff submitted his first proposed release plan in September of 2003.  
16 (Dkt. # 14, page 3). A CCO attempted to contact the sponsor, Mohammad Joban, on September 9<sup>th</sup>,  
17 2003 to arrange for a site visit to the place where Mr. Farnan would reside, a mosque where Mr.  
18 Joban and his family also lived. Mr. Joban did not respond to phone calls and on September 19<sup>th</sup>,  
19 2003 the plan was denied because the CCO had not been able to contact the sponsor. (Dkt. # 14,  
20 page 3).

21 Defendant Lehman established that on October 2<sup>nd</sup>, 2003 Mr. Jorban contacted CCO Jeff  
22 Blodgett. CCO Blodgett walked through the mosque and spoke with Mr. Jordan later that same  
23 day. Plaintiff's release plan was denied for a number of reasons. The plan sponsor, Mr. Jorban was  
24 not aware of plaintiff's entire criminal history. The plan sponsor did not have a relationship with  
25 plaintiff prior to incarceration. The plan would place plaintiff in close proximity to Mr. Jordan's wife  
26 and family who lived in the mosque. (Dkt. # 14, page 4). P plaintiff prior convictions showed a  
27 history of attacks on strangers and an attempt to rape his former landlady. (Dkt. # 14, page 4).

1 There were further concerns that Mr. Jorban may not have the ability to spot signs in plaintiff's  
2 behavior that should be reported immediately to the Department of Corrections. (Dkt. # 14, page 4).

3 Plaintiff submitted a second plan which was also investigated and denied. That plan called for  
4 plaintiff to live in a residence in a high crime neighborhood with many bars and taverns in close  
5 proximity. The residence rented out rooms and ran a daycare center downstairs from the living area.  
6 The residence was located in an area with high foot traffic, gang activity, and school children  
7 traveling back and forth. (Dkt. # 14, page 5). Further, the sponsor had no prior relationship with  
8 plaintiff, and plaintiff had responded to an add in the paper. (Dkt. # 14, page 5). The day care down  
9 stairs and the fact that rooms were rented to boarders made this plan unacceptable to the  
10 Department. (Dkt. # 14, page 5).

11 Plaintiff admitted in deposition that his plans had been investigated and denied based on a  
12 number of factors. (Dkt. # 14, page 9). Defendants contend the complaint should be dismissed for  
13 the following reasons: plaintiff was not eligible for earned early release; the doctrine of favorable  
14 termination mandates dismissal; lack of personal participation; the claims are barred by the Eleventh  
15 Amendment; Plaintiff had no liberty interest in early release; and qualified immunity precludes  
16 damages in this case. (Dkt. # 14).

17 The complaint alleges DOC policy 350.200 precluded plaintiff from being released once the  
18 End of Sentence Review Committee, (ESRC), determined he was being referred for commitment as  
19 a sexually violent predator. (Dkt. # 5, page 3 ¶ 7). Plaintiff contends he submitted 3 plans, but has  
20 come forward with no evidence showing what his third plan was or when it was submitted. Indeed,  
21 other than motions to stay, plaintiff has not responded to the motion for summary judgment.

22 Plaintiff alleges that if the ESRC referred an inmate for civil commitment his release plans  
23 would not be reviewed until three months before his maximum release date. (Dkt. # 5 ¶ 17) The  
24 facts of this case directly contradict plaintiff's assertion and shows two plans being investigated and  
25 denied. The first 11 months before the maximum release date, and the second 8 months before the  
26 maximum release date. (Dkt. # 14, pages 3 through 5).

27 Plaintiff also alleges that sex offenders release plans were "slow walked". (Dkt. # 5 ¶'s 23

1 and 24). Again the record placed before the court contradicts plaintiff's assertions. Defendant  
2 alleges plaintiff's first plan was submitted in September of 2003. Thus, within no more than nine  
3 days of plaintiff submitting his first plan, a CCO was attempting to contact the sponsor. When those  
4 attempts failed the plan was rejected on September 19<sup>th</sup>, 2003. (Dkt. # 14, page 3). When the  
5 sponsor contacted the Department in October, an on site visit was conducted that same day. (Dkt. #  
6 14, page 3).

7 The record does not disclose when plaintiff's second plan was submitted. Presumably it  
8 would not have been before the first plan was denied on September 19<sup>th</sup>, 2003. The plan was denied  
9 December 12<sup>th</sup>, 2003. Thus, there is no evidence to support plaintiff's assertion his plans were "slow  
10 walked."

11 Finally, plaintiff alleges release plans submitted by sex offenders were not being approved or  
12 "in some cases not investigated." (Dkt. # 5, page 9 ¶ 26). The record placed before the court shows  
13 two plans being submitted, timely investigated, and denied for proper reasons. (Dkt. # 14).

#### 14 STANDARD

15 Pursuant to Fed. R. Civ. P. 56 (C), the court may grant summary judgment "if the pleadings,  
16 depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show  
17 that there is no genuine issue of material fact and that the moving party is entitled to judgment as a  
18 matter of law." Fed. R. Civ. P. 56 (C). The moving party is entitled to judgment as a matter of law  
19 when the nonmoving party fails to make a sufficient showing on an essential element of a claim on  
20 which the nonmoving party has the burden of proof. Celotex corp. v. Catrett, 477 U.S. 317, 323  
21 (1985).

22 There is no genuine issue of fact for trial where the record, taken as a whole, could not lead a  
23 rational trier of fact to find for the nonmoving party. Matsushita Elec. Indus. Co. v. Zenith Radio  
24 Corp., 475 U.S. 574, 586 (1986)(nonmoving party must present specific, significant probative  
25 evidence, not simply "some metaphysical doubt."). *See also* Fed. R. Civ. P. 56 (e). Conversely, a  
26 genuine dispute over a material fact exists if there is sufficient evidence supporting the claimed  
27 factual dispute, requiring a judge or jury to resolve the differing versions of the truth. Anderson v.

1 Liberty Lobby, Inc., 477 U.S. 242, 253 (1986); T. W. Elec. Service Inc. v. Pacific Electrical  
 2 Contractors Association, 809 F.2d 626, 630 (9<sup>th</sup> Cir. 1987).

3 The court must liberally construe plaintiff's pleadings because he is acting pro se. However,  
 4 there are limits as to what a court may infer construing a complaint. The court cannot add facts to a  
 5 complaint that have not been plead and cannot supply essential elements to a complaint that the  
 6 plaintiff has failed to plead. Pena v. Gardner, 976 F.2d 469 (9<sup>th</sup> Cir. 1992).

7 In order to state a claim under 42 U.S.C. § 1983, a complaint must allege that (1) the conduct  
 8 complained of was committed by a person acting under color of state law and that (2) the conduct  
 9 deprived a person of a right, privilege, or immunity secured by the Constitution or laws of the United  
 10 States. Parratt v. Taylor, 451 U.S. 527, 535 (1981), overruled on other grounds, Daniels v. Williams,  
 11 474 U.S. 327 (1986). Section 1983 is the appropriate avenue to remedy an alleged wrong only if  
 12 both of these elements are present. Haygood v. Younger, 769 F.2d 1350, 1354 (9th Cir. 1985), cert.  
 13 denied, 478 U.S. 1020 (1986).

#### 14 DISCUSSION

15 In the complaint and in defendant's motion for summary judgment a number of important state  
 16 cases are cited. The crux of plaintiff's case is the argument that he had a state created liberty interest  
 17 protected by due process in "early release." Review of the cases cited may be helpful to the court.

18 The primary case cited by plaintiff in the complaint is In Re Dutcher, 114 Wash App 755 (2002).  
 19 The Washington State Court of Appeals held that an inmate has a limited, but protected, liberty interest  
 20 in earned early release credits. Dutcher was a convicted sex offender who was never eligible for earned  
 21 early release. It is therefore safe to assume the term "earned early release" as used in that case  
 22 encompasses community custody placement in lieu of earned early release. When Dutcher attempted to  
 23 submit a plan for community custody placement he was told by the Department of Corrections he could  
 24 not submit the plan because he had been referred for commitment as a sexually violent predictor. The  
 25 court held Washington's statutory system created a liberty interest and the Department of Corrections  
 26 could not refuse to accept or refuse to investigate Dutcher's plan. The Washington State Court of  
 27 Appeals did not hold Mr. Dutcher was entitled to release, only that the Department had to consider his

1 plan. In Re Dutcher, 114 Wash App 755 (2002).

2 Unlike Mr. Dutcher, plaintiff's plans were accepted and considered. (Dkt. # 14, pages 3  
3 through 5). Thus, the holding of Dutcher is not applicable. Plaintiff seems to cite Dutcher for the  
4 proposition that he had an interest in being released on the date he became eligible for community  
5 placement in leu of earned early release. Dutcher does not stand for that proposition. The holding  
6 does indicate the Department of Corrections had a duty to consider and investigate plans submitted.  
7 They did so in plaintiff's case.

8 The next case cited by plaintiff is In re Capello. Plaintiff does not give a full citation and the  
9 court assumes he is referring to In Re Capello, 106 Wash App. 576 (2001). Mr. Capello entered an  
10 *Alford* plea in 1991. In 1991, at the time of sentencing, the sentencing judge had the option of  
11 making a pre approved address mandatory for community custody placement. The sentencing judge  
12 in Capello chose not to impose that condition. In 1992 the law was changed to make the condition  
13 mandatory unless it was waived by the sentencing judge. See, RCW 9.94A.120 (8)(b)(vi) (1992).  
14 Mr. Capello submitted a plan and was told he must have a pre approved address. The Washington  
15 State Court of Appeals granted his petition and held the Department of Corrections lacked authority  
16 to impose a condition on a sentence when the sentencing judge had rejected that condition. Again,  
17 the court did not mandate release and only held the Department could not require a pre approved  
18 address for persons sentenced prior to the 1992 amendments where the sentencing court had rejected  
19 imposing that condition.

20 The plaintiff in this case was convicted May 15<sup>th</sup>, 1996, well after the change to the  
21 sentencing law that made the condition of a pre approved address mandatory. Capello has no  
22 bearing on this case.

23 Finally, Plaintiff cites to In Re Stewart. Again, petitioner does not provide a cite in the  
24 complaint, but from the context of the argument he must be referring to In Re Stewart, 115 Wash.  
25 App. 319 (2003). After the Washington State Court of Appeals 2001 decision in Capello the  
26 legislature amended Washington's law to indicate the Department of Corrections had the legal  
27 authority to demand a pre approved address prior to release on community custody placement. The

1 amendments supposedly clarified that the Department had this authority since 1988 when community  
2 custody placement in lieu of earned early release was introduced. The Washington State Court of  
3 Appeals rejected the contention that this legislation applied retroactively on this issue, but  
4 acknowledged the prospective application of the statutes amendments. The decision is based on a  
5 separation of powers analysis.

6 Thus, under Washington law, according to the Washington Court of Appeals, the sentencing  
7 judge had to impose the condition of a pre approved address for community placement as a special  
8 condition of the sentence prior to 1992. After 1992 the condition was mandatory unless specifically  
9 waived by the sentencing judge. After 2002 the Department could demand the pre approved  
10 address separate and apart from conditions imposed at sentencing. In Re Stewart, 115 Wn. App.  
11 598 (2003).

12 Plaintiff, in this case, was sentenced in 1996. An approved address was mandatory unless the  
13 sentencing judge waived the condition. Plaintiff did not submit a proposed plan until September of  
14 2003. Stewart was decided in February of 2003 and controls. The Department had a duty to  
15 consider and investigate plaintiff's release plans. They did so. The Department had the ability to  
16 require an approved address unless that condition was waived. There is no evidence to show the  
17 condition was waived or that the condition was imposed. In accordance with the holding in Stewart  
18 plaintiff's release plans were considered and denied on the merits. None of the cases cited by  
19 plaintiff stand for the proposition that he was held improperly or unlawfully beyond his release date.

20 Defendant relies on In Re Crowder, 97 Wn. App. 598 (1999). In that case the Washington  
21 State Court of Appeals held that an inmate statutorily subject to community custody or community  
22 placement could not obtain general earned early release. Instead of earned early release the person  
23 was subject to the Department of Corrections considering them for discretionary transfer to  
24 community custody. In Re Crowder, 97 Wn. App. At 600. The Crowder court did find there is a  
25 "limited liberty interest" but does not discuss what procedure would be mandated by such an interest.

26 Crowder was convicted of two counts of rape second degree. He became eligible for  
27 community placement in lieu of earned early release on October 24<sup>th</sup>, 1997. Crowder had worked

1 with Department of Corrections officials and obtained approval of a release plan. One day before his  
2 scheduled release his sponsor was arrested on fourth degree assault charges and evicted from her  
3 apartment. Release on the approved plan would have placed Mr. Crowder in violation of the  
4 conditions of release. Crowder's release was canceled and he was released 101 days later, after he  
5 was able to obtain approval of a new plan. The court in that case held there was no due process  
6 violation.

7 The holding of Crowder makes clear that the liberty interest at stake is limited and does not  
8 include release. The Crowder court indicates only minimal due process is needed but does not give  
9 any guidance as to what process might be appropriate. The court notes the decision to release an  
10 inmate to community custody placement is discretionary.

11 A. Earned Early Release.

12 Defendant Lehman's first argument is that plaintiff was never entitled to earned early release  
13 and this action must therefore be dismissed. The court understands the argument and defendant is  
14 technically correct. However, the court must liberally interpret the complaint. Pena v. Gardner, 976  
15 F.2d 469 (9<sup>th</sup> Cir. 1992). Review of the Dutcher case shows that even the Washington Court of  
16 Appeals uses terms such as early release and community placement improperly and almost  
17 interchangeably. The court concludes that as used by a pro se plaintiff the term earned early release  
18 may encompass the concept of community custody placement which is available in lieu of earned  
19 early release for inmates convicted of certain crimes.

20 B. Favorable Termination.

21 Application of the doctrine of favorable termination would send plaintiff to habeas corpus to  
22 seek relief in that forum and not allow a civil rights action until habeas relief had been granted.

23 Under 28 U.S.C. § 2254, the district court may entertain an application for a writ of habeas  
24 corpus only from a person in custody pursuant to the judgment of a state court. The custody  
25 requirement of the habeas corpus statute is designed to preserve the writ as a remedy for severe  
26 restraints on individual liberty. Hensley v. Municipal Court, San Jose Milpitas Judicial District, 411  
27 U.S. 345, 351 (1973). The person must be in custody pursuant to the conviction or sentence under



1 attack at the time the petition is filed. Maleng v. Cook, 490 U.S. 488, 490-91 (1989); Carafas v.  
2 LaVallee, 391 U.S. 234, 238 (1968).

3 The problem with defendant's argument is that plaintiff has been released from his criminal  
4 sentence. He is no longer in custody and not able to file any habeas action to contest the denial of  
5 community custody placement. As habeas is not available plaintiff can now seek relief through a civil  
6 rights action.

7 C. Personal Participation.

8 To obtain damages a plaintiff must show that a defendant personally participated in the  
9 alleged violation. Leer v. Murphy, 844 F.2d 628 (9<sup>th</sup> Cir. 1988). Here, plaintiff challenges a  
10 Department policy, 350.200. Defendant Lehman might be liable for his part in enacting the policy if  
11 the policy was applied to plaintiff. Plaintiff has failed to show that the policy was ever applied to  
12 him. Plaintiff alleges the policy prevented the Department from considering his plans for release.  
13 The facts presented by defendant show Plaintiff's release plans were investigated and considered.  
14 Indeed, his first proposed release plan was submitted in September of 2003. By that point in time the  
15 defendant and the Department of Corrections had the benefit of the Washington State Court of  
16 Appeals decision of In Re Stewart, 115 Wn. App. 598 (2003).

17 Plaintiff has failed to show that any action of Defendant Lehman deprived the plaintiff of any  
18 constitutional right. To the extent that this action seeks damages from defendant Lehman in his  
19 personal capacity the defendant's motion for summary judgment should be **GRANTED**.

20 D. The Eleventh Amendment.

21 The defendant correctly notes that the state cannot be sued for damages in federal court.  
22 Edelman v. Jordan, 415 U.S. 651 (1974). To the extent that this action seeks damages from  
23 defendant Lehman in his official capacity the defendant's motion for summary judgment should be  
24 **GRANTED**.

25 E. Liberty Interest.

26 Defendant argues the plaintiff has no "unqualified liberty interest in early release". (Dkt. #  
27 14, page 13). The court agrees with defendants statement, but that does not end the matter. Plaintiff

1 in this case does not have an unqualified interest because he was only entitled to community custody  
2 placement “in lieu of earned early release.” However, the Washington State Court of Appeals has  
3 determined that an inmate in the same position as plaintiff does have a “limited, but protected liberty  
4 interest” in earned early release credits. In Re Dutcher, 114 Wash. App. 755 (2002); In Re Crowder,  
5 97 Wn. App. 598 (1999). While he had no right to release, the state court had held the plaintiff was  
6 entitled to have the department consider his release plans.

7 The question posed is whether this “limited but protected liberty interest” rises to the level of  
8 an interest protected by the Due Process Clause of the Fourteenth Amendment. See, Toussaint v.  
9 McCarthy, 801 F. 2d 1080 (9<sup>th</sup> Cir. 1986)(discussing what is needed for a federal court to find state  
10 created liberty interest protected by the United States Constitution). Neither party has properly  
11 identified or briefed this issue in this case and the court declines to consider the issue without full  
12 briefing.

13 F. Qualified Immunity.

14 This Report and Recommendation has already indicated dismissal of the action is proper for  
15 lack of personal participation and under the Eleventh Amendment. In the alternative the court  
16 reaches the issue of qualified immunity. Qualified immunity is an affirmative defense. Defendant has  
17 raised the defense of qualified immunity. (Dkt. # 14). Defendant is entitled to qualified immunity  
18 from damages for civil liability as long as his conduct does not violate clearly established statutory or  
19 constitutional rights of which a reasonable person would have known. Harlow v. Fitzgerald, 457  
20 U.S. 800, 818 (1982). The existence of qualified immunity generally turns on the objective  
21 reasonableness of the actions, without regard to the knowledge or subjective intent of the particular  
22 official. Id. at 819.

23 To be clearly established, the law must be sufficiently clear that a reasonable official would  
24 understand that his or her action violates that right. Anderson v. Creighton, 483 U.S. 635, 640  
25 (1987). Thus the contours of the right must have been articulated to some degree. The court should  
26 look to whatever decisional law is available to determine whether the law was clearly established at  
27 the time the alleged acts occurred. Capoeman v. Reed, 754 F.2d 1512, 1514 (9th Cir. 1985). In

1 analyzing a qualified immunity defense, the court must determine: (1) what right has been violated;  
2 (2) whether that right was so "clearly established" at the time of the incident that a reasonable officer  
3 would have been aware of its constitutionality; and (3) whether a reasonable public officer could  
4 have believed that the alleged conduct was lawful. See Gabbert v. Conn., 131 F.3d 793, 799 (9th  
5 Cir.1997); Newell v. Sauser, 79 F.3d 115, 117 (9th Cir.1996). Qualified immunity is immunity from  
6 suit, not just from liability. Harlow v. Fitzgerald, 457 U.S. 800 (1982).

7 Here, the right at issue is the right to have a release plan considered by the Department of  
8 Corrections. Prior to the decision in In Re Crowder, 97 Wn. App. 598 (1999), a reasonable prison  
9 official would have been able to rely on Greenholtz v. Nebraska Penal and Correctional Complex,  
10 442 U.S. 1 (1979) for the proposition that an inmate has no inherent right to be conditionally  
11 released. Further, Crowder affirmed the proposition that release was discretionary with the  
12 department. In Re Crowder, 97 Wn. App. 598 (1999). To be sure, Crowder informed the  
13 department there was a "limited liberty interest", but Crowder does not indicate or articulate what  
14 level of due process is needed to protect that interest or even if that interest is protected by the  
15 Fourteenth Amendment Due Process Clause.

16 In 2001 the department's discretion in considering release plans was limited. The  
17 Washington State Court of Appeals informed the Department it could not mandate an approved  
18 address for a person convicted before 1992 if a sentencing judge had considered and rejected that  
19 condition in sentencing. In Re Capello, 106 Wash App. 576 (2001). The Capello decision does not  
20 end the analysis even on that issue.

21 The department's reaction to the Capello decision was to attempt to change the law to  
22 "clarify" that the department did have the authority to demand an approved address prior to release.  
23 The legislation was certainly intended to be retroactive. The proposed amendments were passed and  
24 the department was certainly able to rely on the statute until it was declared to violate the separation  
25 of powers doctrine in 2003. In Re Stewart, 115 Wn. App. 319 (2003).

26 By February of 2003 the department was on notice that the legislation allowing the  
27 department to demand an approved address for inmates sentenced between 1988 and 1992 was

1 invalid. The department was also aware the legislation allowed for the department to prospectively  
2 require an approved address. Further, as of 1992 it appears the address was a standard condition of  
3 sentencing unless specifically waived by the sentencing judge. In Re Stewart, 115 Wn. App. 319,  
4 325 (2003).

5 The holding in Dutcher in 2002 informed the department its discretion did not extend to a  
6 refusal to consider a plan simply because the department had referred the person for civil  
7 commitment. Plaintiff in this action was convicted in 1996. He submitted two plans and both were  
8 considered on the merits. Further, the Washington State Courts have yet to define what level of due  
9 process they require from the state to protect the "limited liberty interest" at stake. It does not  
10 appear there was a constitutional violation in this case, and a reasonable prison official could have  
11 believed his actions constitutional. At the least, defendant Lehman is entitled to qualified immunity  
12 from suit in this action.

### 13 CONCLUSION

14 For the reasons outlined above the undersigned recommends the court **GRANT** defendant's  
15 motion for Summary Judgment and this action be **DISMISSED WITH PREJUDICE**. A proposed  
16 order accompanies this Report and Recommendation.

17 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the  
18 parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed.  
19 R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of  
20 appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule  
21 72(b), the clerk is directed to set the matter for consideration on **AUGUST 5<sup>th</sup>, 2005**, as noted in the  
22 caption.

23 DATED this 11<sup>th</sup> day of June 2005.

24 /S/ J. Kelley Arnold  
25 J. Kelley Arnold  
26 United States Magistrate Judge  
27  
28